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IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 24.

MAE SILVER

vs.

BENJAMIN SILVER, *Appellee.*

BRIEF FOR APPELLEE.

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BRIEF OF APPELLEE.

Reference to Official Report of Opinion Below.

The opinions delivered in the Supreme Court of Errors for the State of Connecticut are printed in 108 Conn. 371, and also in the record (P. 25 and 31).

Statement of the Case.

The statement of facts contained in the brief of the appellant (P. 1 and 2 of appellant's brief) correctly sets forth the facts of this case except that the following should be added thereto:

At no time during the proceedings before the trial Court, including the presentation of evidence, the argument on the motion that the Court direct a verdict in favor of the defendant (P. 22 and 23), and in the motion filed by the plaintiff (appellant) to have the verdict thus rendered set aside (P. 4), did the plaintiff (appellant) raise the question that Chapter 308 of the Public Acts of Connecticut of 1927, violated the constitutional

guaranties accorded the plaintiff by the Fourteenth Amendment of the Federal Constitution.

The only specifications of appeal assigned by the appellant in her appeal to the Supreme Court of Errors of the State of Connecticut were:

That the Court erred in denying the plaintiff's motion to set aside the verdict and for a new trial;

In granting the defendant's motion that a verdict be directed in his favor;

In holding, ruling and deciding that conceding all the questions of fact in the plaintiff's favor she would not be entitled to recover as a matter of law. (P. 4 and 5.)

The question was raised for the first time by the plaintiff (appellant) in the presentation of her appeal before the Supreme Court of Errors of the State of Connecticut and it was considered by said Court.

Argument.

Summary:

It is the duty of a Court to sustain a legislative enactment unless its invalidity is demonstrated beyond a reasonable doubt.

One who assails the classification made in a legislative enactment carries the burden of showing that it does not rest upon any reasonable basis and is palpably arbitrary.

A large discretion is necessarily vested in the State Legislature to determine not only what interests of public convenience and welfare require but what measures are necessary to secure such interests.

That a State may under the police power regulate travel upon its public highways cannot be doubted, and this includes the power to regulate the use of motor vehicles.

The Legislature having the power to regulate the operation

of motor vehicles, that includes the power to enact legislation affecting the reciprocal rights and duties of all who use them, whether he be owner, operator or occupant, when those rights and duties arise out of such operation.

Even the case most strongly relied upon by the appellant recognizes that the fixing of liability upon the occupants of a motor vehicle is cognate and germane to the general subject of regulating motor vehicles upon the highways of a State.

Since motor vehicles have come into general use they have been classified separately from other methods of transportation and the power of the Legislature to impose upon their owners and operators duties different from those imposed upon operators of other vehicles has been generally upheld.

The fact that a statute applies only to motor vehicles does not create an unreasonable classification of vehicles using the road and is not a discrimination against a particular class, and does not deny the equal protection of the law.

The fact that a statute operates against only passengers in a motor vehicle and not one being transported in any other method of transportation is not an unlawful discrimination against a particular class, and does not deny them the equal protection of the law.

The fact that the statute distinguishes between one who is a gratuitous passenger in a motor vehicle and one paying for transportation, does not render it violative of the Federal Constitution.

The analogy between the gratuitous passenger in an automobile and a gratuitous bailment is sound.

The driver of an automobile is exercising a privilege granted by the Legislature, and not a right; a guest in an automobile is in the same status. It is competent for the Legislature to prescribe the conditions upon which said privilege shall be exercised.

The Legislature may prohibit the operation of motor vehicles upon the highways of a State, and it can therefore regulate the reciprocal rights and duties of parties riding in the same where such operation is permitted.

The fact that a statute may take away a common law right does not render it unconstitutional as the Legislature may suspend the operation of a general law.

Technical inequalities in a legislative enactment do not offend against the equal protection clause of the Fourteenth Amendment.

The lessening of the legal obligation of the operator of a motor vehicle towards his guest does not tend to increase the likelihood of negligent operation on his part.

The Statute being general in its application embracing all persons under substantially like circumstances, and not being an arbitrary exercise of power, does not deny to appellant the equal protection of the law, nor violate any other provision of the Constitution of the United States.

Whatever may have moved the Legislature to pass said Statute it was within the Police Power of the State and should be upheld.

Argument Proper.

POINT 1.

Duty of Court in Passing upon Constitutionality of Legislative Enactment.

It is the duty of a Court to sustain a legislative enactment unless its invalidity is demonstrated beyond a reasonable doubt.

Beach vs. Bradstreet, 85 Conn. 344,
Cooper vs. Telfax, 4 U. S. (4 dau.) 14, 19,
Cooley's "Constitutional Limitations," 8th Ed. pp. 334, 371,
Lindsley vs. Natural Carbonic Gas Co., 220 U. S. 61, 78.

POINT 2.

Appellant Has the Burden in Assailing Constitutionality of Legislative Enactment.

One who assails the classification made in a legislative enactment carries the burden of showing that it does not rest upon any reasonable basis and is palpably arbitrary.

Lindsley vs. Natural Carbonic Gas Co., 220 U. S. 78,

Louisville & Nashville R. R. vs. Melton, 218 U. S. 36.

POINT 3.

Legislative Discretion.

In passing upon the constitutionality of Chap. 308 of the Public Acts of Connecticut for 1927 it must be borne in mind that a large discretion is necessarily vested in the State Legislature to determine not only what the interests of public convenience and welfare require but what measures are necessary to secure such interests.

Cotter vs. Stoeckel, 97 Conn. 239,

Cooley's "Constitutional Limitations," 8th Ed. Page 334,

Louisville & Nashville R. R. vs. Melton, 218 U. S. 52, 53,

Magoun vs. Ill. Tr. & Sav. Bk., 170 U. S. 294,

Orient Ins. Co. vs. Daggs, 172 U. S. 557, 562,

Royster Guano Co. vs. Virginia, 253 U. S. 412, 415.

Furthermore traffic conditions vary in different localities.

Therefore latitude must be allowed for legislative appraisement of local conditions and for legislative choice of methods for controlling the same.

Adams vs. Milwaukee, 228 U. S. 572,
Clark vs. Deckebach, 274 U. S. 392, 397.

POINT 4.

Regulation of Traffic Under Police Power.

It must be admitted that a State Legislature may under the police power regulate travel upon the highways of the State.

Jones vs. Brin, 165 U. S. 180, 182,
New Orleans Gas Co. vs. La. Light Co., 115 U. S. 650.

POINT 5.

Powers to Regulate Rights of Parties in Motor Vehicles Under Police Power.

Assuming as we must the power of the Legislature to regulate the operation of motor vehicles, that includes the power to enact legislation affecting the reciprocal rights and duties of all who use them, whether he be owner, operator or occupant, where these rights and duties arise out of such operation.

Buelke vs. Levenstadt, 214 Pac. 42,
Hartje vs. Moxley, 235 Ill. 164,
West vs. Asbury, 89 N. J. Law 402,
Opinion of General Court, 251 Mass. 569,
Packard vs. Banton, 264 U. S. 140,
Minnesota Iron Co. vs. Kline, 199 U. S. 593.

In Birmingham T. Ry. & Utilities Co. vs. Carpenter, 194

Ala. 141, apparently the case most strongly relied upon by the appellant, referred to on page 9 of her brief, the Court said at page 145:

> "We may concede that the fixing of a liability upon occupants of a motor vehicle is cognate and germane to the general subject of regulating motor vehicles upon highways of the State."

POINT 6.

Classification of Motor Vehicles for Legislative Purposes Generally Upheld.

Since motor vehicles have come into general use they have been classified separately from other methods of transportation and the power of the Legislature to impose upon their owners and operators duties different from owners and operators of other vehicles has been generally upheld.

Berry on Automobiles, Vol. 1, Sec. 30,
Garrett vs. Turner, 235 Pa. St. 383,
Westfall vs. Chicago, 280 Ill. 318,
Hendrick vs. Maryland, 235 U. S. 615.

The fact that the law applies only to motor vehicles does not create an unreasonable classification of vehicles using the road, is not an unlawful discrimination against a particular class, and does not deny the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Christy vs. Elliott, 216 Ill. 31,
Hendrick vs. Maryland, 235 U. S. 615,
State vs. Mayo, 106 Maine 62,
State vs. Swagerty, 203 Mo. 517.

Therefore the fact that the statute singles out the motor vehicle and does not include the nearly antiquated horse drawn wagon, or other methods of transportation does not make it violative of the equal protection clause of the Fourteenth Amendment.

If the Legislature may classify motor vehicles it may with like right classify an owner, occupant or driver of the same.

POINT 7.

Inherent Justice in Distinction Between Duty Owed Gratuitous Guest and One Being Transported for Pay.

There is nothing arbitrary or unreasonable in applying a different standard of duty toward a gratuitous passenger in a motor vehicle as distinguished from one being transported for compensation, hence the exception of the common carrier by the statute is valid.

There is inherent justice in the requirement that one who undertakes to perform a duty gratuitously should not be under the same obligation as one who enters upon the same undertaking for compensation. The measure of liability of one who undertakes to carry gratis is the same as that of one who undertakes to keep gratis.

Massalette vs. Fitzroy, 228 Mass. 508,
Giblin vs. McMullen, L. R. 2 P. C. 317,
Moffatt vs. Bateman, L. R. 3 P. C. 115.

The Legislature was acting well within the limits of the Police Power in making a distinction between the degrees of care to be exercised by owner or operator of motor vehicle toward a guest and that to be exercised toward one who pays for his transportation.

POINT 8.

Operation of Motor Vehicle on Highway a Privilege and Not a Right.

One owning and operating a motor vehicle upon the highways of the State of Connecticut is exercising a privilege and not a right, and it is competent for the Legislature to prescribe the conditions upon which said privilege shall be exercised.

Commonwealth vs. Kingsbury, 199 Mass. 542,
People vs. Fodera, 164 Pac. 22,
People vs. Rosenheimer, 209 N. Y. 115,
Ruggles vs. State, 120 Md. 553.

POINT 9.

Legislature May Prohibit Operation of Motor Vehicles on Highways, Hence May Regulate Rights of Parties Where Operation is Permitted.

The Legislature of the State of Connecticut may prohibit altogether the use of motor vehicles upon the highways within its borders.

Doyle vs. Continental Ins. Co., 94 U. S. 535,
State vs. Mayo, 106 Me. 62,
Stone vs. Mississippi, 101 U. S. 814,
Otis vs. Parker, 187 U. S. 606,
People vs. Rosenheimer, 209 N. Y. 115.

If the Legislature may prohibit operation of motor vehicles upon the highway altogether, then it can certainly exercise the much lesser right of regulating the reciprocal rights and duties of parties riding in the same where such operation is permitted.

POINT 10.

Legislature May Alter the Common Law.

The deprivation of a common law right does not make the Act unconstitutional for a Legislature may suspend the operation of general law.

Buelke vs. Levenstadt, 214 Pac. 42,
Carrozza vs. Federal Finance Co., 149 Md. 223.

POINT 11.

Technical Inequalities in a Statute Must Be Overlooked.

The classification made by the Statute does not deprive the appellant of the equal protection of the law and is a valid exercise of the Police Power of the State. Even assuming, as claimed by appellant in her brief, that if she had been a gratuitous passenger in the automobile of her husband and he was demonstrating it for purposes of sale, and that she could recover under the exception contained in the second section of the statute, that would not affect the validity of the Statute.

In a classification for governmental purposes there cannot be an exact exclusion or inclusion of persons and things. Orient Ins. Co. vs. Daggs, 172 U. S. 562.

Technical inequalities do not offend against the equal protection clause of the Fourteenth Amendment.

Louisville & Nashville R. R. vs. Melton, 218 U. S. 52.
Lindsley vs. Natural Carbonic Gas Co., 220 U. S. 78, 79.

POINT 12.

Lessening Obligation of Operator of Motor Vehicle Does Not Tend to Increase Likelihood of Negligent Operation.

The fact that the statute lessens the legal obligation of the operator or owner of a motor vehicle towards his guest, does not

tend to increase the likelihood of negligent operation on his part, any more than does the statute making it compulsory for a motor vehicle owner to carry insurance against liability for accidents, thereby relieving the owner of liability to respond in damages for injuries caused by his negligent operation of the same.

Opinion of the General Court, 251 Mass. 569.

POINT 13.

Statute Makes a Reasonable Classification and Is Not Arbitrary.

The Statute being general in its application, embracing all persons under substantially like circumstances, and not being an arbitrary exercise of power, does not deny to the appellant the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Buelke vs. Levenstadt, 214 Pac. 42,
Cooley's "Constitutional Limitations," 8th Ed. 825,
Duncan vs. Missouri 152 U. S. 377,
Lowe vs. Kansas, 163 U. S. 81,
Louisville & Nashville R. R. vs. Melton, 218 U. S. 36,
Patsone vs. Penn., 232 U. S. 138, 144,
Royster Guano Co. vs. Virginia, 253 U. S. 412.

POINT 14.

Act Should Be Upheld.

As to what actually moved the Legislature to pass this statute we will never know.

It may have desired to put its stamp of approval upon what the Court calls an "Inherent Justice," in the requirement that one who undertakes to perform a duty gratuitously should not be

under the same measure of obligation as one who enters upon the same undertaking for pay.

It may have recognized that the enactment of legislation tending to decrease motor vehicle accidents and loss of life incident thereto was one of its greatest problems, and that to bring same about it was necessary to regulate the reciprocal rights and duties of parties riding in motor vehicles.

Suffice it to say, that the classification made by the statute in question is within the wide range of discretion which the Legislature has under the police power, since the statute has a fair and substantial relation to the object of the legislation, which is the control or regulation of motor vehicle traffic upon our public highways.

It is therefore respectfully submitted and urged that Chap. 308 of the Public Acts of Connecticut for 1927 does not deprive the appellant of the equal protection of the law under the Fourteenth Amendment, nor violate any right guaranteed to her by the Federal Constitution.

The Act should be upheld.

THE APPELLEE,

By

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